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SUBJECT: GOC Seeks Solution after Supreme Court Invalidated
Environmental Permit of U.S. Electricity Company

¶1. (SBU) Summary: Senior Chilean officials have told the Ambassador that the Chilean Supreme Court's invalidation of an environmental permit for AES Gener's power plant is a serious problem that could undermine Chile's image as a stable investment environment, and that the Bachelet administration is working hard to come up with a solution. The Supreme Court's June 22 decision, based on zoning problems rather than environmental concerns, halted the plant's construction. AES is concerned that a lengthy delay in issuing new regulations would make the project financially unviable. End summary.

¶2. (U) On June 22, Chile's Supreme Court invalidated an environmental permit granted by the Chilean regulatory authorities for the Campiche thermal power plant, built in an industrial zone along the coast in central Chile. U.S. company AES owns a 71 percent interest in Campiche through its subsidiary AES Gener, the second largest generator of electricity in Chile. As a result of the Supreme Court's ruling, Gener stopped work on Campiche, which had been expected to commence commercial operations in 2011.

High Cost of Delay

¶3. (SBU) The Ambassador met on July 23 with AES Chairman Andres Gluski and Director General Felipe Ceron to discuss the implications of the court decision. Gluski stressed his belief that the GOC intends to resolve the problem but is concerned that the resolution could take too long. He estimated the cost of moth-balling the project at \$4-8 million/month and claimed if the delay is more than 12 months AES would have to cancel the project. AES has already invested around \$170 million in the \$500 million Campiche project. Moreover, if the project were cancelled, its suppliers, mainly in Korea (general contractor) and Italy (turbines), would face large losses as well.

¶4. (SBU) Gluski characterized the Supreme Court decision as an activist Court's signal to the government that it does not approve of the environmental permitting process. He emphasized that the ruling was about permitting and zoning processes, and not based on pollution from the plant or environmental contamination issues.

¶5. (SBU) Gluski said that since the decision challenges the underlying regulatory framework for approving and building power plants, it raises questions about the legal standing of other power plants. He added that \$35 million in financing for nearby AES power plant also under construction was not going to be disbursed, and that AES Gener is under a credit watch.

Zoning and Environmental Permit Challenges

¶6. (SBU) AES identified several issues at play, including building power plants in industrial zones and (in the case of the Campiche plant) in a flood zone. The Ministry of Housing is responsible for

the broad zoning guidelines and has been tasked with developing new guidelines that will accommodate the Supreme Court's decision. According to AES, the Minister of Housing appears willing to address the problem of industrial zones but not "high risk" zones. Another complication is that the regional zoning plan for the area where the plant is built is subject to a separate legal challenge currently being considered by the Supreme Court.

¶7. (SBU) After the zoning rules are resolved, the power plant will need a new environmental permit. The company is working with the government so that it would not have to repeat the entire environmental permitting process when re-applying.

Advocacy with Minister of Interior and CONAMA

¶8. (SBU) Gluski asked the Ambassador to raise AES's concerns about the cost of a lengthy delay and note the importance of fast-tracking zoning changes to Chilean officials.

¶9. (SBU) The Ambassador met with Minister of Interior Edmundo Perez Yoma on August 4 to discuss the AES case. Perez Yoma, who was well-informed about the AES situation, stated that the government understands that this is a serious problem: beyond the immediate impact on the AES investment, the decision also harms Chile's investment climate. Perez Yoma stated that the government is focused on the matter and working to develop a response; he noted that he has assigned one of his senior advisors to work on the matter. The Ambassador also raised the issue with Energy Minister Marcelo Tokman, who promised to be supportive.

¶10. (SBU) EPOL Counselor raised the AES case with Alvaro Sapag, Executive Director of the National Commission for the Environment

(CONAMA), on August 10. Sapag said he had met with AES six times to discuss what would be necessary to issue a new environmental permit once the zoning issues were addressed. He explained that the Supreme Court had overturned the prior environmental permit because of zoning issues, but had not provided clear guidance what must be addressed in the new permit. He believes the challenge is to determine what can be carried over from the old permit approval process and what would need to be redone, since redoing studies or consultations will take time. EPOL Counselor also raised the issue with economic officials at the Ministry of Foreign Affairs, who promised to look into the matter. Post will continue to follow-up with relevant contacts.

COMMENT

¶11. (SBU) As publicly noted by Energy Minister Tokman (and privately by Interior Minister Perez Yoma), the Chilean Supreme Court's decision to invalidate an environmental permit creates uncertainty and sends a negative message to potential investors that goes beyond AES's immediately problems. Key members of the Bachelet administration understand the need to rectify the situation quickly to avoid losing much-needed foreign investment in Chile's energy sector. Therefore, while the open-ended timeframe to clarify zoning laws and environmental permit processes is problematic for AES, it is likely that the GOC will act to correct the legal uncertainties. End comment.

SIMONS